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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITHERM FOOD SYSTEMS, INC.,)
a Illinois corporation; and)
JENNIE-O FOODS, INC., a)
Minnesota corporation,)

Plaintiffs,)

-vs-)

No. CIV-01-347-C)

SWIFT-ECKRICH, INC., d/b/a,)
CONAGRA REFRIGERATED FOODS, a)
Delaware corporation,)

Defendant.)

COPY

VIDEO DEPOSITION OF ARNOLD S. MIKELBERG

TAKEN ON BEHALF OF THE PLAINTIFFS

IN OKLAHOMA CITY, OKLAHOMA

ON SEPTEMBER 7, 2001

REPORTED BY: JENNI L. GUNTER, CSR
DODSON COURT REPORTING, INC.
POST OFFICE BOX 892560
OKLAHOMA CITY, OKLAHOMA 73189
(405) 616-DEPO (3376)

EXHIBIT I

PTO-003252

1 demonstrated in Manchester, England?

2 A Yes.

3 Q What -- what did you do in response to
4 this correspondence from David Howard?

5 A I did nothing.

6 Q What did Mr. Dorfman do, if anything?

7 A I'm sure he talked to David about it, but
8 I wasn't in the meeting at that -- at that
9 particular stage, that I remember.

10 Q When you saw the process demonstrated in
11 Manchester what was the pyrolysis agent that was
12 used?

13 A I couldn't tell you.

14 Q Okay. But some was, some liquid
15 pyrolysis?

16 A I'm -- I'm -- I'm not sure.

17 Q Okay. What is the -- the word pyrolysis,
18 I looked it up because I didn't know what it
19 meant. What does that mean?

20 A It doesn't mean you being paralyzed.
21 It's an agent that will cling to the product and
22 help in the coloration of it.

23 Q Maillose, what does that mean to you?

24 A It's a sugar. Maillose is a -- I think a
25 sugar derivative.

1 Q And is that used in this process, to your
2 knowledge?

3 A I couldn't tell you for sure.

4 Q Did the brown -- the issue of trials on
5 browning turkey breasts here, and it speaks to the
6 results were highly successful. 98 percent yield
7 in 14 minutes. 94 percent. I misspoke.

8 A Yeah.

9 Q 94 percent yield in 14 minutes.

10 Is that, the use of the word yield, that
11 you had talked about earlier?

12 A Yes.

13 Q That is you get less shrinkage?

14 A Yield is the difference between what you
15 put in and what you got out.

16 Q So if the process is one where you are
17 able to brown these turkey breasts with less
18 shrinkage, that's what we're talking about here?

19 A That is correct.

20 Q Did Thorn Apple Valley ever receive any
21 product that had been done by this process from
22 Unitherm?

23 A I believe so.

24 Q What is Boston Markets?

25 A Boston Markets is -- it's a franchise

1 as the period of time when you had his equipment?

2 A That is correct. This is not -- this is
3 before the period of time that we had his
4 equipment.

5 Q Yes. This is setting it up --

6 A Yes.

7 Q -- as I read it?

8 A Right.

9 Q When it speaks of the smoke process, what
10 is your understanding of the smoke process?

11 A It's the process of heating the product
12 and applying smoke so that the product is -- has
13 the smoked appearance and flavor and smell when it
14 comes out of the process.

15 Q "Applying smoke," being the liquid
16 pyrolysis product?

17 A Right.

18 Q It says the objective trial -- or "The
19 objectives of the trial are as follows: 1)
20 Unitherm will supply a 2 zone Rapidflow for a
21 two-week period." Well, there we see what at
22 least his thought was about how long you'd keep
23 the trial?

24 A Yes.

25 Q I guess the word Rapidflow applies to

1 A -- but I don't -- I can't tell you
2 specific times or when I did.

3 MR. BAILEY: Mr. Schroeder, you've seen
4 the patent, I take it?

5 MR. SCHROEDER: Yes.

6 MR. BAILEY: Okay.

7 (Plaintiffs' Exhibit No. 5 was
8 marked for identification purposes
9 and made a part of the record.)

10 Q (By Mr. Bailey) I hand you what I've
11 marked as Plaintiffs' Deposition Exhibit 5, which
12 is United States Patent, number 5,952,027. Date
13 of patent it says September 14, 1999.

14 Have you seen this patent?

15 A Yes, I have.

16 Q Is this the process that David Howard
17 demonstrated to you?

18 A From me reading the patent it's very,
19 very similar to the process that David Howard
20 presented to us. Technically, as far as reading a
21 patent, I feel that I'm not adjudged to say if
22 it's exactly the same or it isn't. But the
23 principle of this is very, very similar to what
24 was presented by David to me.

25 Q For example, the abstract there on the

1 front page of this document speaks as follows, "A
2 method of producing a crisp surface and imparting
3 a uniform golden-brown color to a precooked whole
4 muscle meat product by coating at least a portion
5 of the surface of a precooked whole muscle meat
6 product with a browning liquid pyrolysis product.
7 The coated surface is then exposed to an energy
8 source that selectively heats the coated surface
9 of the whole muscle meat product at a temperature
10 and for a time sufficient to develop a
11 golden-brown color on the exposed surface, without
12 substantially shrinking the precooked whole muscle
13 meat product."

14 Now, that's --

15 A That's exactly what David presented to us
16 of what he could -- he could do with his process,
17 exactly, this portion of it. But when I get into
18 the technical aspect of it, you know, I can't
19 compare because I don't have David -- what -- I
20 don't have David's exact terminologies either.

21 Q Okay.

22 A The only word I don't know is pyrolysis.
23 Pyrolysis, I've never seen that word. Which means
24 heat transfer of some kind.

25 Q Yeah. On page 8, if you would turn to

1 ask you a few questions.

2 A Sure.

3 Q Just to review for a moment. The period
4 of time during which you were employed as
5 president of Swift-Eckrich was approximately what?

6 A It seems -- as I mentioned before, it
7 seems like it was '94 or -- actually '95 through
8 some part of '96.

9 Q So for approximately how many months were
10 you the president of Armour Swift-Eckrich?

11 A It seems like it was about 13 months, 14
12 months. But I -- there was an interim situation
13 where I was president of another small division of
14 them. But it was somewhere around that time.

15 Q So about 13 months starting sometime in
16 1995?

17 A Right.

18 Q And prior to the time that you became the
19 president of Armour Swift-Eckrich you had no
20 knowledge of what was going on within the company,
21 correct?

22 A That is correct.

23 Q Now, we've spoken of a man named Prem
24 Singh. How much time total have you spent with
25 Mr. Singh?

1 A Total?

2 Q Total.

3 A If you totaled it all up, maybe an hour,
4 hour and-a-half.

5 Q And Mr. Singh during that hour and-a-half
6 didn't tell you of everything he'd ever did, did
7 he?

8 A No. But he never said that -- told me at
9 any time what he did on -- previous to this.

10 Q All right.

11 A Stated that.

12 Q Now, were you familiar with all the
13 people -- let me back up for a second.

14 At the time that you were the president
15 of Swift-Eckrich there was a research and
16 development department, correct?

17 A Yes.

18 Q And there were people in that
19 department --

20 A Yes.

21 Q -- on a full-time basis?

22 A Yes.

23 Q Do you have any idea how many?

24 A I thought a hundred.

25 Q Did you know all those people?

1 A No, I did not.

2 Q Did you know what they all did?

3 A No.

4 Q Did you know what they all had done?

5 A No.

6 Q Was there someone known as Dr. Siad
7 Hussein (phonetic) working there?

8 A There could have been. I have no idea.

9 Q Certainly if such a person did work there
10 in the period of '90 to '91 you don't have any
11 idea what he might have been doing?

12 A I have no idea.

13 Q And you have no idea what Mr. Singh was
14 doing during that period of time?

15 A No, sir.

16 Q Now, at one point Mr. Howard made a
17 presentation to Swift-Eckrich, is that right?

18 A Yes.

19 Q And was it your understanding at the time
20 that the purpose of that demonstration was to sell
21 Swift-Eckrich an oven?

22 A Not exactly. To sell an oven or the
23 process?

24 Q To sell a process.

25 A To sell a process and an oven to do that

1 process.

2 Q All right. Now, the oven that Mr. --
3 first of all, Mr. Howard at the time was
4 representing Unitherm, and Unitherm was in the
5 business of selling ovens, correct?

6 A They sold ovens, but they also sold
7 processes that the ovens were able to -- to do.

8 Q Now, there was a particular type of an
9 oven which Mr. Howard was attempting to sell
10 Swift-Eckrich at the time, is that right?

11 A Yes.

12 Q Was that called a Rapidflow oven?

13 A That is correct.

14 Q And were you familiar with the Rapidflow
15 oven?

16 A Yes.

17 Q Now, the Rapidflow oven could be used to
18 do a variety of different things in the food
19 processing industry, is that correct?

20 A Yes.

21 Q Besides just --

22 A Yes.

23 Q -- browning turkey breasts?

24 A Yes.

25 Q And there was no particular process that

1 Q I'm sorry. -- Mr. Mikelberg, you're
2 speaking in terms of the result. But could you
3 tell me what was different about the process
4 itself in technical terms?

5 A No, I can't, because I don't know exactly
6 what that process was.

7 Q Now, we talked today about a pyrolysis
8 product, do you recall that?

9 A Right, I recall.

10 Q Do you know what a pyrolysis product is?

11 A It's something that enhances -- when heat
12 is applied to it, it enhances the action of the
13 heat.

14 Q Now, in the caramelization process that
15 Swift-Eckrich used before the time that Mr. Howard
16 got there, wasn't caramel applied?

17 A Sugars of -- sugars of some kind were
18 applied.

19 Q And that did promote the browning of the
20 process, of the surface, correct?

21 A Not -- not in the same manner at all.

22 Q But it did -- it did --

23 A It tended to bronze the surface of the
24 product but not in the same manner.

25 Q Now, is caramel a pyrolysis product?

1 A I could not tell you that. The first
2 time I heard the term pyrolysis was today.

3 Q Now, when Mr. Howard put on his
4 demonstration, did he use a pyrolysis product?

5 A I cannot remember.

6 Q You looked before at the patent, correct?

7 A That is correct.

8 Q Do you still have that in front of you?

9 A Yes.

10 Q What is the Exhibit Number?

11 A Exhibit Number 5.

12 Q All right. Now, Mr. Bailey directed your
13 attention to the first sentence of the word -- of
14 the abstract. And you see in there it talks about
15 a pyrolysis product?

16 A Right.

17 Q Now, would it be fair to say that you
18 don't know whether the process that Mr. Howard
19 demonstrated complies with that first sentence in
20 using a pyrolysis product?

21 A Well, it was explained to me the
22 pyrolysis product was something to enhance the
23 browning of it.

24 Q Well, I think we just said that caramel
25 enhances the browning, doesn't it?

1 Swift-Eckrich toward that same end prior to the
2 time that Mr. Howard made this presentation?

3 A I could not make that statement.

4 Q You don't know one way or the other?

5 A I don't -- I certainly do not know.

6 Q Are you familiar with patents?

7 A That's not my area of expertise.

8 Q Do you know how to determine what the
9 invention that is claimed in a patent is?

10 A No. As I say, I'm not familiar with
11 patents.

12 Q I'm not suggesting you should be, sir. I
13 just wanted to know.

14 A I don't ask you to make high thoughts,
15 and you don't...

16 Q Now, you said that Mr. Singh, Prem Singh,
17 went to Europe, and while there he visited
18 Unitherm, is that correct?

19 A Right.

20 Q Was it the purpose of that visit to have
21 Mr. Singh evaluate the Unitherm oven?

22 A No. He was studying radio frequency
23 cooking at that time.

24 Q All right. What is radio frequency
25 cooking?

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF OKLAHOMA

3 UNITHERM FOOD SYSTEMS, INC.,)
4 an Illinois corporation;)
5 and JENNIE-O-FOODS, INC.,)
6 a Minnesota corporation,)

7 Plaintiffs,)

8 vs.)

9 SWIFT-ECKRICH, INC., d/b/a)
10 CONAGRA REFRIGERATED FOODS,)
11 a Delaware corporation,)

12 Defendant.)

COPY

No. CIV 01-347-C

13 The Deposition of PREM S. SINGH, called
14 by the Plaintiffs for examination, taken pursuant to
15 notice, taken before CARYL L. HARDY, CSR NO.
16 084-3896, a Notary Public within and for the County
17 of Cook, State of Illinois, and a Certified Shorthand
18 Reporter of said state, taken at 33 North Dearborn
19 Street, Suite 600, Chicago, Illinois, on the 28th day
20 of November, A.D., 2001, at 9:00 o'clock a.m.

21 VICTORIA COURT REPORTING SERVICE, INC. (312) 443-1025

22 EXHIBIT K

23 PTO-003267

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 BY MR. BROWN:

2 Q The reporter is handing you what's marked
3 Deposition Exhibit 1. What is that document?

4 A This is an approved patent.

5 Q I note on the cover of the exhibit in the
6 left-hand column it says, "Inventor: Prem S. Singh;"
7 is that correct?

8 A That's correct.

9 Q Is that you?

10 A Yes.

11 Q Did you, in fact, invent the subject
12 matter claimed in this patent?

13 A Yes.

14 Q Did you invent all of it?

15 A Yes.

16 Q Is there anything discussed in this
17 patent that you did not invent?

18 A No.

19 Q Can you tell me when you invented the
20 subject matter claimed in this patent?

21 A You mean when did I file it?

22 Q When did you invent it?

23 A '88, '89.

24 Q Tell me how that came about.

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PTO-003268

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 different. It might be seven, eight feet.

2 Remember, this was a concept. This
3 is the idea, and so we implemented from that idea,
4 and so cutting locations might be different. It
5 could be 90 degrees there, mechanical stuff.

6 This shows here five feet worktable,
7 for example. It shows the steam valve. It doesn't
8 connect to the controller. So that might be
9 different. The 20 GPM pump might be different. It
10 could be, you know, 40 GPM. It shows 200-gallon tank
11 there. It could be 150-gallon tank. Those are . .
12 things, mechanical stuff were different.

13 Q Isn't it true that the Enersyst system
14 you installed produces the product according to the
15 process claimed in the patent and it's done so since
16 the end of 1989?

17 A No. It's not true.

18 Q How is that not true?

19 A This is not golden brown color.

20 Q Is that the only difference?

21 A The LAB value of this product is
22 different. It's a -- the '027 patent is -- doesn't
23 have the -- this chiller -- impingement chiller that
24 shows here.

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PTO-003269

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 column 8. And we see claim 1 which begins column 8,
2 line 4. Let's take a look at that claim and tell me
3 anything called for in that claim which was not
4 present in the process as on the Enersyst system
5 after 1989.

6 (Witness perusing document.)

7 BY THE WITNESS:

8 A Yeah. Regarding claim 1, the browning
9 liquid here is a pyrolysis product as opposed to '89
10 process which was the nonpyrolysis product which does
11 not have capacity to play a Maillard reaction-type
12 mechanism. So this is a fundamental difference:
13 Pyrolysis versus this is just the coloring agent.

14 And then develop a golden brown
15 color is another difference -- substantial difference
16 from this flow sheet there.

17 Q Isn't it true that some liquid pyrolysis
18 products are, in fact -- let me restate that.

19 Isn't it true that some caramel
20 colorings are, in fact, liquid pyrolysis products?

21 A No. When you say caramel color, they're
22 not liquid pyrolysis product. Caramel color is just
23 coloring dye basically.

24 Q I refer you to column 4 of your patent at

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 the label that is -- goes with Maillose caramel
2 coloring or not.

3 Q Maillose is, in fact, a liquid pyrolysis
4 product, is it not?

5 A Yes.

6 Q What is a pyrolysis product?

7 A It's a heat reactant. So what you're
8 doing there, you are taking sugar or the base -- in
9 this case, it could be even wood -- and you're going
10 through thermal processing and going through a
11 distillation process. And then you are taking off
12 from the distillation columns the desirable liquid.
13 And then ultimately it will give you the browning
14 characteristic that you are looking for as --

15 Q Are not caramel compounds themselves
16 formed by heat?

17 A Caramel?

18 Q Yes.

19 A Like I said, the difference is that it's
20 not a pyrolysis product. It's a coloring agent, so
21 it does not react the same way as the Maillose will
22 react. So it's a fundamentally big difference
23 between just the caramel coloring and Maillose or
24 pyrolysis product as it's known in industries.

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PTO-003271

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 MR. BROWN: It is also a speaking
2 objection, and those, I believe, are not
3 allowed in any district.
4 You may answer the question.

5 BY THE WITNESS:

6 A I'm not sure I understand naturally
7 follow means, but it's a follow. Whether it's
8 natural follow or not, I'm not understanding your
9 question. Can you explain what that means?

10 BY MR. BROWN:

11 Q Wouldn't it be apparent to just about
12 anybody in your field given knowledge of this
13 Energysyst system that was being used in 1989 that you
14 could use Maillose caramel coloring in that system?

15 A Not at all. There's a fundamental
16 difference in terms of reaction steps involved, the
17 mechanism, the reaction kinetics involved. They
18 produced completely different kind of by-products in
19 the reaction phenomena. There are at least a dozen
20 reactions take place that's not present in '88.

21 So it's not obvious at all. It's
22 not naturally follow from that process. For example,
23 there's no aldehyde produced in this process.
24 There's no aceteldehyde produced from that process.

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PTO-003272

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 It's a completely different reaction mechanism and
2 kinetics.

3 Q Do the claims call for any of that?

4 A Well, claim calls for pyrolysis golden
5 brown products which are the results of that process.

6 Q So is it now your testimony that your
7 conception in 1988 did not include the use of a
8 liquid pyrolysis product?

9 A Ask again, please.

10 Q Is it now your testimony that your
11 conception in 1988 did not include the use of a
12 liquid pyrolysis product?

13 A '88 was not a liquid pyrolysis product.

14 Q And it's also your testimony that your
15 conception in 1988 did not involve the golden
16 browning of any product?

17 A There was no definition of golden
18 browning.

19 Q Just so we can confirm, you testified
20 that the shrinkage obtained or resulting from the use
21 of the Enersyst system was in the range of from about
22 2 to 3 percent; is that correct?

23 A That's correct.

24 Q You testified that the inlet temperature

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 A Yes.

2 Q -- at that time?

3 A Yes.

4 Q Did your summary include a list of
5 relevant prior art materials?

6 MR. SCHROEDER: I object on the
7 grounds of attorney-client privilege. I
8 instruct the witness not to answer.

9 MR. BROWN: Are you objecting to
10 conversations held, or are you objecting
11 to this document that was given?

12 MR. SCHROEDER: Regardless of whether
13 it was orally or written in this
14 document, I'm objecting to your asking
15 the witness about his communications with
16 the legal department concerning this
17 invention and the preparation of a patent
18 application.

19 BY MR. BROWN:

20 Q More important, Mr. Singh, did you tell
21 the patent office about this Enersyst system that was
22 in operation producing product circa 1989?

23 A It's a conventional process.

24 Q You did not inform the patent office of

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 solution of caramel coloring with a low pH 2.5
2 through 3.5, for surface caramel coloring of the
3 product. The Malloise will be in a 12 percent
4 solution and heated to 140 degree F."

5 Is this referring to the Wells
6 process using the Enersyst system?

7 A This may be running a test. Sometimes
8 when you run a small test, still you have to write
9 this procedure.

10 Q Is this referring to a test at a pilot
11 plant? Is that what you're saying?

12 A No. It could be at Wells.

13 Q This was to be done at Wells?

14 A Yes, but this look like a test.

15 Q I notice on the second page it says,
16 again, "Description of proposed change: Use
17 Maillose," and repeats what was stated on the earlier
18 page.

19 Then it says, "Products affected by
20 name: Skinless Slice and Serve Oven Prepared
21 caramel, not the mesquite smoked; products affected
22 by," and then it gives UPC code numbers: UPC
23 45300-29041, 45300-29048, 45300-29051, and
24 45300-23274; is that correct?

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PTO-003275

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 A Yes.

2 Q The next line says at Wells, Minnesota,
3 correct?

4 A Yes.

5 Q Then under paragraph 6 it says, "Change
6 affects printed product labels." It says, "Choose
7 option A, B, or C by marking with an X." And the
8 item there marked with an X is make change rapidly;
9 get temporary labels approved.

10 Is that correct?

11 A That's correct.

12 Q Isn't it correct, Mr. Singh, that Armour
13 Swift-Eckrich actually began using Maillose for the
14 production of these products?

15 A No. That's not correct.

16 (Singh Deposition Exhibit No. 5
17 marked for identification, 11-28-01.)

18 BY MR. BROWN:

19 Q Mr. Singh, we've handed you what is
20 marked Exhibit Number 5. Do you recognize this
21 document?

22 A No. I don't recognize this document.

23 Q On about the top line it indicates the
24 fax designation there Swift-Eckrich Wells, and then

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PTO-003276

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 it's got an arrow R and D; is that correct?

2 A Yes.

3 Q Then it refers to a Maillose pH and
4 concentration check sheet; is that correct?

5 A That's correct.

6 Q And then it has several columns, the
7 first being a date column. My copy -- I can't read
8 the last date on the second page, but I can read
9 dates of 1-3-94, 1-5-94, 1-6-94, 1-7-94, 1-10-94,
10 1-13-94, and that carries over to the second page; is
11 that correct?

12 A Yes.

13 Q And the middle column on this chart
14 states hours of production; is that correct?

15 A That's correct.

16 Q Doesn't this, in fact, indicate that
17 Armour Swift-Eckrich was producing product using
18 Maillose --

19 A No.

20 Q -- in the Enersyst system?

21 A No. This is the check of the pH versus
22 the Maillose.

23 Q What does hours of production mean?

24 A Just that they ran that so many hours, so

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 that this is a test.

2 Q Doesn't this indicate that this was faxed
3 from the Wells plant to R and D?

4 A Yes.

5 (Singh Deposition Exhibit No. 6
6 marked for identification, 11-28-01.)

7 BY MR. BROWN:

8 Q Mr. Singh, we've handed you what's marked
9 Exhibit 6. Do you recognize this document?

10 A No.

11 Q Is it dated January 26th, 1994, is that
12 correct, up at the upper right-hand corner?

13 A Correct.

14 Q Who is Mr. Syed Hussain?

15 A He works for Armour Swift-Eckrich.

16 Q Does he report to you?

17 A No.

18 Q Do you report to him?

19 A No.

20 Q Did you at any time?

21 A No.

22 Q What is his position at Armour
23 Swift-Eckrich?

24 A The current position is that he is

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PTO-003278

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 director of process control.

2 Q Do you work in conjunction with him on
3 projects?

4 A Sometimes.

5 Q Were you working in conjunction with him
6 on this project?

7 A Which project is it?

8 Q This project indicated in this document.

9 A I don't know what this is.

10 Q So you don't know what these documents
11 say; is that your testimony?

12 A Well, I can read it. I can tell you what
13 it is. Do you want me to read it?

14 Q You don't know whether these documents
15 are saying that Maillose was being used in the
16 Enersyst system or not; isn't that correct?

17 A Can you allow me to read it before I
18 answer your question?

19 Q Sure.

20 (Witness perusing document.)

21 BY THE WITNESS:

22 A This seems to be test. They ran some
23 tests for shelf life evaluation, the color evaluation
24 internally. And this is a change order to say that

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DEPOSITION OF PREM S. SINGH -- 11/28/01

1 effectively not to produce any more test products.

2 BY MR. BROWN:

3 Q Does this say anywhere that this was just
4 a test?

5 A No, it doesn't, but because the change
6 form --

7 Q So your answer is no, it doesn't; is that
8 correct?

9 A It doesn't.

10 MR. SCHROEDER: Let the witness
11 finish his answer, please.

12 BY MR. BROWN:

13 Q Doesn't it state --

14 MR. SCHROEDER: Wait a minute. The
15 witness hasn't finished his answer that
16 he was giving to your previous question.

17 BY THE WITNESS:

18 A It's a test, and the change mean that the
19 test is done usually. We use a change form. You
20 require some kind of form to -- even to run the test
21 product. Otherwise, USDA will not allow you to run
22 any product even -- because once you go in the
23 manufacturing plant, you need certain documentation
24 and approval to run the tests.

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DEPOSITION OF PREM S. SINGH -- 11/28/01

1 BY MR. BROWN:

2 Q In paragraph 1, in a matter similar to
3 the previous document we viewed, it says, "Description
4 of proposed change;" is that correct?

5 A The first --

6 Q The paragraph numbered 1.

7 A Yeah, yeah.

8 Q Isn't it true that it states that
9 proposed change is to stop using Maillose?

10 A It could be -- to stop using Maillose
11 doesn't mean that -- it could be eight hours run and
12 they're saying stop using it.

13 Q Referring to paragraph 3, isn't it true
14 that Maillose was then being used in January 26th,
15 1994, to produce products UPC 45300-29041, 29048,
16 29051, and 23274?

17 A Those were the product tested. That's
18 all it says.

19 MR. BROWN: Could you repeat the
20 question for him?

21 (Record read.)

22 BY THE WITNESS:

23 A Yes.

24

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DEPOSITION OF PREM S. SINGH -- 11/28/01

1 meeting.

2 Q And what were those meetings about?

3 A It was about several things, I
4 understood, like sheet metals, vats, helping him to
5 get business in our company, getting into one of
6 their plants.

7 And so Arni Mikelberg requested that
8 we should provide him some business, if we can:
9 Going to the plant, several plants; seeing if -- if
10 he can provide us something, you know, like I said,
11 all kind of sheet metals, drains, vats, racks,
12 tubes. And then so that was the main purpose.

13 And then second one was that he was
14 going to send us an oven that we were supposed to
15 evaluate.

16 Q What type of evaluation were you going to
17 do on the oven?

18 A To see what can we do with that oven.

19 Q Was there any discussion of whole muscle
20 meat browning?

21 A No.

22 Q Was there any discussion of any type of
23 meat browning?

24 A No, not that day anyway.

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DEPOSITION OF PREM S. SINGH -- 11/28/01

1 the oven?

2 A The claim was that that oven will brown
3 without putting anything on it. That was the main
4 purpose of me testing that oven. And we spent -- I
5 don't know -- eight weeks striving to test that
6 claim, which completely failed.

7 Q Were there any other type of tests
8 performed on the oven?

9 A Yes.

10 Q What were those?

11 A Liquid smoke and -- that's one. And we
12 ran some Maillose. And last, when we were shipping
13 that oven, we connected to that oven a natural smoke
14 generator and the pipe and temperature control, and
15 that was tested also.

16 Q Did you tell anyone at Unitherm or
17 Proctor prior to receiving this oven that you
18 intended to connect natural smoke to it?

19 A Yes. I did discuss with Howard.

20 Q Did you have any discussions with David
21 Howard while these tests were being conducted?

22 A I don't remember that we discussed with
23 him, but Gaydusek, yes.

24 Q How long did the tests last?

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 We have a -- right now we have
2 equipment where we are testing it may take four or
3 five months because it's not just plug it in, run the
4 product, then you're done. Then you have to evaluate
5 the products chemically, you know, microbiologically,
6 sensory. So it's not just looking the oven and just
7 run the test. It's not atypical to run the test for
8 four or five months.

9 Q What were the results of these tests?

10 A It was complete failure from the
11 objective that was described to us.

12 Q And what objective was that?

13 A That you can brown the product without
14 any coating on it.

15 Q What about the other tests that you
16 conducted? What were the results?

17 A Well, the natural smoke that we hooked up
18 in there, that produced somewhat acceptable product.

19 Q What about the liquid smoke Maillose
20 tests?

21 A It was somewhat, again, successful.

22 Q Were any evaluations done of the product
23 produced using liquid smoke and/or Maillose?

24 A Say it again.

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DEPOSITION OF PREM S. SINGH -- 11/28/01

1 BY THE WITNESS:

2 A No, I don't.

3 BY MR. BROWN:

4 Q He then says, "We have a question mark on
5 the marketability of it and value your input." Isn't
6 he, in fact, saying that Unitherm developed the
7 process and he would like Armour Swift-Eckrich's
8 input on the marketability of the process?

9 MR. SCHROEDER: Objection; calls for
10 speculation.

11 BY MR. BROWN:

12 Q Isn't that true?

13 A I don't know what it says.

14 Q It speaks of the trials. You mentioned
15 these earlier. "The objectives of the trials are as
16 follows: Unitherm will supply 2 zone Rapidflow for a
17 two-week period; Unitherm seek to prove uniform
18 smoking in less than ten minutes; the shrink should
19 be 1 to 3 percent; the color should match or better
20 your existing product."

21 Is this your understanding of the
22 trials that were to be done on the Unitherm oven?

23 A No.

24 Q Isn't this, in fact, the process claimed

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DEPOSITION OF PREM S. SINGH -- 11/28/01

1 in at least claim 1 of the '027 patent?

2 A No.

3 Q Item number 7 says, "Unitherm will
4 license Armour Swift-Eckrich with the process for
5 50 percent of the return on investment exclusively."
6 Did anyone ever discuss that offer with you?

7 A No.

8 Q Did you ever hear of it?

9 A No.

10 (Singh Deposition Exhibit No. 25
11 marked for identification, 11-28-01.)

12 BY MR. BROWN:

13 Q We've handed you what's marked
14 Exhibit 25. I notice that it is addressed to you.
15 What is this document?

16 A I don't recall this document, but it
17 shows that criteria for the trial it reads.

18 Q Item number 1 calls for liquid smoke
19 application for turkey breasts; dwell time 7.5
20 minutes at 330 degrees C; internal temperature will
21 rise by 1 degree C; 1 percent shrinkage.

22 Isn't this, in fact, the process
23 claimed in the '027 patent?

24 A Completely not. What kind of liquid

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DEPOSITION OF PREM S. SINGH -- 11/28/01

1 "The following is the price for the linear smoking
2 process line." Isn't it true that this is the --
3 this linear smoking process line is for practicing
4 the process as claimed in the '027 patent?

5 A No.

6 Q What process is it for?

7 A This is the process that we were testing
8 for completely different purpose to duplicate natural
9 smoke to these products.

10 Q Does this process brown the product?

11 A Yes.

12 Q Doesn't this process, in fact, produce a
13 golden brown color?

14 A That I don't know. My guess is not. It
15 will not produce.

16 Q That is your guess. Your testimony is
17 you don't know?

18 A That's correct, because there's not
19 enough information here to determine that.

20 Q Did you have any discussions with
21 Mr. Howard concerning this line?

22 A Yes.

23 Q What was discussed?

24 A Price, delivery. We do that normally all

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 doesn't mean that, you know, I've not read it. I
2 just don't recall it.

3 Q Did you attend the International Poultry
4 Exposition in Atlanta, the 22nd and the 24th of that
5 month of that year?

6 A I don't remember. 1997, I don't know.

7 Q It states in the second paragraph, "Among
8 our various exhibits, we will be showing the first
9 inline browning/smoking system for deli turkey/crowns
10 and hams. The product shrinkage using this system is
11 only 2 and a half percent and results are achieved
12 with a smoke time of ten minutes."

13 Isn't this, in fact, discussing the
14 process claimed in the '027 patent?

15 A I don't know what it's saying. It's only
16 saying the shrinkage is 2 and a half percent. The
17 results are achievable.

18 Q Isn't it true that Mr. Howard told you
19 that this was a line which had, in fact, been
20 constructed and had already been sold to Plantation
21 Foods for practicing the turkey browning process
22 claimed in the '027 patent?

23 A That's not true.

24 Q Now claimed in the '027 patent?

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DEPOSITION OF PREM S. SINGH -- 11/28/01

1 A Not true.

2 Q Did you contact Mr. Howard or anyone else
3 at Unitherm concerning the showing of this inline
4 browning/smoking system?

5 A No.

6 Q You never told him to stop?

7 A Stop what?

8 Q Not show it.

9 A No, no.

10 Q Did you tell him that this was your
11 process?

12 A No.

13 Q Did you discuss this with anyone?

14 A No.

15 (Singh Deposition Exhibit No. 32
16 marked for identification, 11-28-01.)

17 BY MR. BROWN:

18 Q This is Exhibit 32. This is a letter
19 from David Howard dated April 21st, 1997, to -- how
20 does Mr. -- how does he pronounce that?

21 A Des Lauriers.

22 Q Des Lauriers?

23 A Yes.

24 Q Have you ever seen this document?

DEPOSITION OF PREM S. SINGH -- 11/28/01

1 conducted in the pilot plant on Maillose treated
2 turkey breasts. Jim Costelloe's first priority has
3 been to develop a consistent golden brown color."

4 Isn't it true that until
5 January 12th, 1998, you had not been able to develop
6 a consistent golden brown color?

7 A The golden brown if you say, that's
8 correct, not consistently.

9 (Singh Deposition Exhibit No. 35
10 marked for identification, 11-28-01.).

11 BY MR. BROWN:

12 Q This is Exhibit 35. It's a letter from
13 David Howard to you and Chris Salm dated April 27th,
14 1998. Do you recall this document?

15 A I don't recall, but this -- if it was
16 sent to me, it should be in my file. I don't recall
17 specifically.

18 Q Isn't it true that David Howard told you
19 that Unitherm sold systems for practicing the process
20 now claimed in the '027 patent to Plantation Foods
21 and to House of Raeford?

22 A No.

23 MR. CASTRO: Why don't we go off the
24 record for a few minutes? We may be

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